

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rejoynetwork, LLC)	File Numbers EB-06-IH-1772 and
)	EB-06-IH-1748
)	NAL Account No. 200932080012
Licensee of Station WAAW(FM))	Facility ID No. 4094
Williston, South Carolina)	FRN No. 0008498685
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 16, 2008

Released: October 16, 2008

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”),¹ and Section 1.80 of the Commission’s Rules,² we find that Rejoynetwork, LLC (“Rejoynetwork” or the “Licensee”), licensee of Station WAAW(FM), Williston, South Carolina (the “Station”) apparently willfully and repeatedly violated Section 73.1206 of the Commission’s Rules by broadcasting multiple telephone conversations without giving prior notice to the individuals being called of the Licensee’s intention to do so.³ Based on a review of the facts and circumstances, we find the Licensee apparently liable for a forfeiture in the amount of \$4,000. We also admonish Rejoynetwork for the late filings in this matter.

II. BACKGROUND

2. The Commission received multiple complaints alleging that on March 23, 2006, between approximately 10:45 a.m. and 11:15 a.m., a Station radio personality, Ryan B., called Raquel Oliver, Willis M. (Buster) Boshears, Jr., and Cedric Jerome Johnson and broadcast each conversation on-air over the Station without first informing the individuals being called that the conversations would be so broadcast (the “Complaints”).⁴ Recordings of the alleged broadcasts were supplied by two of the complainants.

¹ See 47 U.S.C. § 503(b).

² See 47 C.F.R. § 1.80.

³ See 47 C.F.R. § 73.1206. Station WAAW(FM) was licensed to Frank Neely at the time of the apparent violations. The licensee of the Station was later assigned *pro forma* from Mr. Neely to Rejoynetwork. See FCC File No. BAL-20080314ABZ, granted March 20, 2008 and consummated April 4, 2008. According to that application, Mr. Neely is the sole manager and sole member of Rejoynetwork.

⁴ See Complaint of Iain Crawford, submitted to the FCC on March 27, 2006 (IC Number 06-WB11627850) (alleging that Ryan B. called the city administrator and airport director on-air over the Station on March 23, 2006, and did not inform either that they were on-air); Complaint of Willis M. Boshears, Jr., dated March 27, 2006 (including statements from Ms. Oliver and other persons allegedly with first-hand knowledge of Mr. Boshears’ telephone conversation with Ryan B.); Complaint of Tonya Riddle, submitted to the FCC on March 27, 2006 (IC Number 06-WB11628201) (alleging that Ryan B. failed to inform Mr. Boshears that the telephone conversation was being aired live); Complaint (Footnote Continued...)

3. The Enforcement Bureau (the “Bureau”) issued a letter of inquiry (“LOI”) to the then-licensee of the Station, Frank Neely, on June 12, 2006.⁵ The LOI was re-sent to Frank Neely on November 2, 2006 via certified mail, return receipt requested and also faxed to Frank Neely on November 2 and 3, 2006. Frank Neely filed a response to the LOI on December 8, 2006 (“LOI Response”), four days after it was due and apparently without permission for the late filing.⁶ In its LOI Response, Frank Neely provides a declaration under penalty of perjury from Ryan B.⁷ In his declaration, Ryan B. admits interviewing Messrs. Boshears and Johnson on-air on or about March 23, 2006, but denies interviewing Ms. Oliver.⁸ Ryan B. also declares that Messrs. Boshears and Johnson were informed, prior to their being recorded for broadcast and prior to their being placed on the air, that it was his intention to interview them on the air. Ryan B. further declares that each agreed to the on-air interviews prior to broadcast.⁹ Ryan B. claims the Station no longer has a recording of the broadcasts at issue.¹⁰ Ryan B. also asserts that Messrs. Boshears and Johnson are public officials and “subject to fair comment.”¹¹

4. The Bureau’s Investigations and Hearings Division received recordings of the broadcasts in question in late 2006 from Messrs. Johnson and Crawford. The recordings are apparently identical.¹² In the recording, Ryan B. initially takes a phone call from an owner of a cab company. During the call, the owner discusses how his company is unable to pick up customers at the airport because of the airport’s exclusive cab contract. After the call, Ryan B. says he is going to try to get airport authorities on the phone. Ryan B. calls Mr. Boshears. When an unidentified woman answers the phone, Ryan B. asks for Mr. Boshears, explaining that he is calling to ask for information regarding the airport noting that his previous messages had not been returned. Ryan B. is temporarily put on hold and then put through to Mr. Boshears. When Mr. Boshears answers, he says “hello” and then Ryan B. identifies himself as from the Station and states that he previously left a message and faxed a freedom of information request. At no time does Ryan B. inform the woman answering the phone or Mr. Boshears that the call is being recorded or broadcast on-air. Ryan B. continues by questioning Mr. Boshears about a cab contract at the airport and Mr. Boshears responds. After ending the call with Mr. Boshears, Ryan B. calls Mr. Johnson. A woman answers the call. Ryan B. asks for Mr. Johnson, is placed on hold, and is put through to Mr. Johnson. When Mr. Johnson answers, he states his name, then Ryan B. identifies himself as from the Station. Ryan B. does not tell the woman answering the call or Mr. Johnson that the call is being recorded or broadcast. Ryan B. mentions his prior call to Mr. Boshears to Mr. Johnson and complains about the cab contract at the airport. Approximately one minute into the call, Mr. Johnson asks if he is on the air. Ryan B. responds affirmatively. In response, Mr. Johnson asks, “Don’t you think it would have been fair of you to let me

(Continued from previous page)

of Cedric Jerome Johnson, dated April 20, 2006 (alleging Ryan B. failed to properly notify him and Mr. Boshears that his telephone conversations with each of them were broadcast live); E-mails from Iain Crawford to FCCINFO, dated October 6, 2006.

⁵ See Letter from Tom Hutton, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Frank Neely, dated June 12, 2006.

⁶ See Letter from Frank Neely, to Mary Turner, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated December 8, 2006 (including Declaration of Brian L. Doyle, whose air name is Ryan B.) (“LOI Response”).

⁷ See *id.*

⁸ See *id.* at Declaration of Brian L. Doyle.

⁹ See *id.*

¹⁰ See *id.*

¹¹ *Id.*

¹² Because the separately produced recordings are apparently identical in content, they will be referred to hereafter as one recording (the “Recording”).

know that you were putting me on the air?” Ryan B. informs Mr. Johnson that he calls everybody on the air and apologizes to him.

5. On May 15, 2007, the Bureau issued a follow-up LOI to the Licensee which included a copy of the recording it received.¹³ Frank Neely’s response to the follow-up LOI was due June 4, 2007. The Licensee did not respond by the deadline. Instead, two days after the deadline had passed on June 6, 2007, the Licensee requested an extension of time for filing a response.¹⁴ Despite its untimeliness, the Bureau granted that request without prejudice to enforcement, in the interest of considering a full record.¹⁵ Frank Neely filed a response to the follow-up LOI on June 29, 2007 (“Follow-up Response”).¹⁶ The Follow-up Response included an affidavit from Ryan B. who, after listening to the recording, stands by the Licensee’s initial LOI Response stating “those answers are to the best of my recollection and belief true and correct.”¹⁷ Ryan B. admits, however, that the prior responses appear to be inconsistent with the recording, but contends that the audio clips were edited and do not accurately reflect the broadcast because the recording does not contain statements that he clearly recalls being made during the broadcast.¹⁸ Ryan B. alleges that the recording was prepared by a radio personality at another station whose “demonstrated animosity towards [the Station and Ryan B.] gives him motive for creating a doctored CD that would place [the Station] in a bad light.”¹⁹ He further alleges that this radio personality “has at his disposal the means and capabilities of making [a] doctored CD.”²⁰ Frank Neely argues that the recording cannot properly be considered as evidence of what was actually broadcast over the Station.²¹

6. On November 27, 2007, the Bureau provided copies of the Licensee’s LOI Response and Follow-up Response to the complainants.²² In reply, Mr. Boshears declares under penalty of perjury that he was not informed that he was being interviewed for later broadcast nor was he informed that the

¹³ See Letter from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to David Tillotson, Esq., Counsel for Frank Neely, dated May 15, 2007.

¹⁴ See Letter from David Tillotson to Mary Turner, via email on June 6, 2007

¹⁵ See E-mail from Jennifer Lewis to David Tillotson, dated June 11, 2007 (granting request for extension of time until July 1, 2007).

¹⁶ See Letter from David Tillotson, to Mary Turner, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated June 29, 2007 (including Declaration of Brian L. Doyle, whose air name is Ryan B.) (“Follow-up Response”).

¹⁷ *Id.* at Declaration of Brian L. Doyle.

¹⁸ According to Ryan B., these statements include, “without limitation,” the following: (a) Ryan B.’s statement that he was returning to the air from a commercial break; (b) Ryan B.’s statement that he would be interviewing Mr. Boshears, which on-air statement is what prompted the taxi driver to call in and complain about the taxi contract; (c) Ryan B.’s statement on the air that he had contacted airport authorities while off the air on commercial break and that he was waiting for them to return his calls; (d) Ryan B.’s statement on the air that an airport authority official had returned his call while he was speaking with another caller; and (e) the statement by the secretary who answered the phone at Mr. Johnson’s office that she had been listening to the show. *See id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *See Follow-up Response.*

²² See Letter from Rebecca Hirselj, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Cedric Jerome Johnson, Willis M. Boshears, Jr., Tonya Riddle, and Iain Crawford, dated November 27, 2007. By letter dated January 3, 2008, the Bureau followed-up with Ms. Riddle to confirm whether she intended to file a reply. *See* Letter from Rebecca Hirselj, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Tonya Riddle, dated January 3, 2008.

conversation taking place was broadcast live.²³ Also under penalty of perjury, Mr. Johnson responds to the Licensee's submissions by stating that he was not notified that he was being put on the air.²⁴ Specifically, Mr. Johnson states that Ryan B., while disclosing his station affiliation, never mentioned that he was live on the air.²⁵ Mr. Johnson states that while talking to Ryan B., staff members told him he was on the radio. At that time, Mr. Johnson asked Ryan B. if he was on the air, and said "Don't you think it would have been fair to let me know that . . . ?"²⁶ According to Mr. Johnson, Ryan B. then apologized for not notifying him that he was on the air.²⁷ Mr. Crawford responded to the Licensee's submissions by verifying, under oath, that the recordings he submitted are "true and accurate duplicate files of the broadcast."²⁸ Ms. Riddle who allegedly listened to the broadcast at issue responded to the Licensee's submissions stating that Mr. Boshears was unaware of his being live on the air and that until Mr. Johnson asked Ryan B. if the call was being taped, Ryan B. did not inform Mr. Johnson of the live broadcast of the call.²⁹

III. DISCUSSION

7. Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.³⁰ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.³¹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition applies to both Sections 312 and 503(b) of the Act,³² and the Commission has so interpreted the term in the Section 503(b) context.³³ The Commission may also assess a forfeiture for violations that are repeated, and not willful.³⁴ "Repeated" means that the act was committed or omitted more than once or lasts more than one day.³⁵ In order to impose a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be

²³ See Letter from Willis M. Boshears, Jr., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated December 11, 2007.

²⁴ Affidavit of Cedric Jerome Johnson, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated December 26, 2007.

²⁵ See *id.*

²⁶ *Id.*

²⁷ See *id.*

²⁸ Affidavit of Iain Crawford, dated December 20, 2007, as submitted to Rebecca Hirselj, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission ("*Crawford Affidavit*").

²⁹ See Letter from Tonya Riddle to Rebecca Hirselj, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated January 10, 2008.

³⁰ See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

³¹ 47 U.S.C. § 312(f)(1).

³² See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

³³ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

³⁴ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

³⁵ See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388 ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

imposed.³⁶ The Commission will issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.³⁷ As described in greater detail below, we conclude that Rejoynetwork is apparently liable for a forfeiture in the amount of \$4,000 for its apparent willful and repeated failure to inform the called parties that their telephone conversations would be broadcast or would be recorded for later broadcast before so broadcasting or recording them.

8. Section 73.1206 of the Commission's Rules requires that unless the party is aware, or may be presumed to be aware from the circumstances of the conversation, that the conversation is being or likely will be broadcast, *before* broadcasting or recording a telephone conversation for later broadcast, a licensee must inform any party to the call of its intention to record and/or broadcast the conversation.³⁸ The Commission will presume such awareness only where "the other party to the call is associated with the station (such as an employee or part-time reporter), or where the other party originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations."³⁹

9. Section 73.1206 reflects the Commission's longstanding policy that prior notification is essential to protect individuals' legitimate expectation of privacy and to preserve their dignity by avoiding nonconsensual broadcasts of their conversations.⁴⁰ The Commission specifically favors an individual's privacy interest when balancing it against a broadcaster's interest in enhancing program appeal with increased spontaneity and entertainment value using telephone conversations. The Commission has found that such purported enhancement is not sufficiently critical to justify intruding on individual privacy.⁴¹ The Commission has held that the prior notification requirement ensures the protection of an individual's "right to answer the telephone without having [his or her] voice or statements transmitted to the public by a broadcast station" live or by recording for delayed airing.⁴² Consistent with this reasoning, the Commission has defined "conversations" broadly "to include any word or words spoken during the telephone call," and has specifically rejected the argument that "utterances made by the parties called in answering the phone" are not subject to the rule's prior notification requirement.⁴³ Thus, aside from the narrowly-tailored exceptions noted above, neither of which is applicable here, before any portion of a telephone conversation is recorded for later broadcast or before any portion of a telephone conversation is initiated for simultaneous broadcast, the licensee must inform the other party to the call that the conversation will be recorded for broadcast purposes or will be broadcast live.

³⁶ See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

³⁷ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

³⁸ See 47 C.F.R. § 73.1206.

³⁹ *Id.*

⁴⁰ See *Amendment of Section 1206: Broadcast of Telephone Conversations*, Report and Order, 3 FCC Rcd 5461, 5463-64 (1988) ("1988 Order re the Broadcast of Telephone Conversations"); see also *Station-Initiated Telephone Calls Which Fail to Comply With Section 73.1206 of the Rules*, Public Notice, 35 FCC 2d 940, 941 (1972); *Amendment of Part 73 of the Commission's Rules and Regulations with Respect to the Broadcast of Telephone Conversations*, Report and Order, 23 FCC 2d 1, 2 (1970); *WXDJ Licensing, Inc.*, Forfeiture Order, 19 FCC Rcd 22445 (Enf. Bur. 2004) (assessing a forfeiture for failure to inform the called party that their telephone conversation would be broadcast or recorded for later broadcast before so broadcasting or recording them; forfeiture paid).

⁴¹ See *1988 Order re the Broadcast of Telephone Conversations*, 3 FCC Rcd at 5464.

⁴² *Id.* at 5463.

⁴³ *Hefel Broadcasting-Contemporary, Inc.*, 52 FCC 2d 1005, 1006 (1975) (holding that "conversation" was defined to include any word or words spoken during the telephone call and imposing \$2,000 forfeiture for failure to provide notice prior to recording a conversation).

10. Based on the record, we find the Licensee apparently violated Section 73.1206 of the Commission's Rules by broadcasting telephone conversations between Ryan B. and Messrs. Boshears and Johnson, respectively, without giving either prior notice of its intention to do so.⁴⁴ We recognize that there are conflicting statements in the record, but note that the Commission has broad discretion as to how much weight to accord disputed facts.⁴⁵ As described above, both Messrs. Boshears and Johnson submitted sworn statements that they were not given prior notice that their respective calls were being recorded or broadcast live. Indeed, the complainants' sworn submissions including, but not limited to, recordings of the calls, corroborate the complainants' version of the facts. Specifically, the recording substantiates Mr. Boshears' and Mr. Johnson's, as well as the other complainants', version of events. In the recording, there is no indication that Ryan B. gave the recipients of the calls notice of the intended broadcast use of the particular conversations before broadcasting them, as the Licensee contends. The Station apparently broadcast the entirety of each call beginning with Ryan B. placing the calls. At no time during the conversation as recorded does Mr. Boshears indicate his awareness of the call's recording or live broadcast. Mr. Johnson, on the other hand, becomes suspicious and, approximately one minute into the call, pointedly asks if the call is being broadcast. When he learns that he is on the air, Mr. Johnson asks Ryan B. "Don't you think it would have been fair of you to let me know that you were putting me on the air?"⁴⁶ In response, Ryan B. seems to admit that the required advance notice was not provided and apologizes to Mr. Johnson. Tellingly, Ryan B. explains to Mr. Johnson: "I call everybody on air. . . . I don't normally talk to politicians or people in office that hold public office that work for the taxpayers; I don't normally talk to them on the side. . . . I don't talk to folk who hold public office off the airway. . . ."⁴⁷ The lack of notice to Messrs. Boshears and Johnson apparently violates Section 73.1206 of the Commission's Rules.⁴⁸

11. We are not persuaded by the Licensee's contention that the recording is edited. First, we note that the Licensee failed to provide any evidence to substantiate its contention. Further, one of the complainants states under oath that the recordings he submitted to the Commission are "true and accurate

⁴⁴ Based on the record, we do not find the Licensee apparently violated 73.1206 of the Commission's Rules with respect to Ryan B.'s alleged telephone conversation with Ms. Oliver on March 23, 2006. As described above, through a sworn statement, Ryan B. denies having spoken with Ms. Oliver that day and indicates she was never interviewed by the Station. In their respective replies to the Licensee's LOI Response and Follow-up Response, none of the complainants specifically refute that contention. We do note, however, that based on a review of the recordings supplied by the complainants, it appears that before broadcasting telephone conversations between Ryan B. and a female answering the telephone before Mr. Boshears' call and between Ryan B. and a female answering the telephone before Mr. Johnson's call, both that day, the Licensee may have failed to inform those females of its intention to broadcast the conversations. However, without more evidentiary support indicating required notice was not provided to those individuals prior to the calls, we do not find apparent violations of 73.1206 of the Commission's Rules with respect to those conversations.

⁴⁵ See *Quatron Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 4749, 4754 ¶ 15 (2000) (citing *Gencom, Inc., v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987)) ("While we recognize that there is conflicting evidence in the record, we nonetheless note that the Commission has broad discretion as to how much weight to accord disputed facts based on the existing record.").

⁴⁶ Recording.

⁴⁷ *Id.*

⁴⁸ Even if Ryan B.'s statements identifying himself and the Station could be viewed as constituting implicit notice, such notice is inadequate. As indicated above, under Section 73.1206, a party's awareness of a station's intent to broadcast a telephone conversation is presumed only if the party is associated with the station or the party originates the call. It appears that Messrs. Boshears and Johnson had no connection to the Station and did not originate the calls. In any event, any notice Ryan B. may have given on-air was given too late since it occurred after Messrs. Boshears and Johnson began speaking and after Ryan B. had started broadcasting the conversation. Section 73.1206 of the Commission's Rules clearly requires that such notice be provided "[b]efore recording a telephone conversation for broadcast, or broadcasting such a conversation simultaneously with its occurrence"

duplicate files of the broadcast.”⁴⁹ In addition, the recording is fully corroborated by Messrs. Boshears’ and Johnson’s sworn statements, each parties to the respective calls, as well as the third party complainants. Moreover, the recordings submitted to the Commission from two of the complainants are apparently identical. Finally, in the recording itself Mr. Johnson states that he had not been informed the call was being broadcast and Ryan B. admits that fact. In light of the foregoing, we believe the recordings support our findings.

12. The Licensee also apparently asserts that as a result of their status as public officials, Messrs. Boshears and Johnson waived their right to privacy.⁵⁰ We reject this argument. Assuming that Messrs. Boshears and Johnson are “public officials” (which status the Commission is not deciding herein), such status does not establish a legal basis for a licensee to disregard the notice requirement of Section 73.1206.⁵¹ The Licensee also claims, without any legal or factual explanation or support, that Messrs. Boshears and Johnson are subject to “fair comment.”⁵² We find that this unsubstantiated claim does not bear on our decision under Section 73.1206.

13. Based upon the evidence before us, we find that the Licensee apparently willfully and repeatedly violated Section 73.1206 of the Commission’s rules. The Commission’s forfeiture guidelines establish a base forfeiture amount of \$4,000 for the unauthorized broadcast of a telephone conversation.⁵³ In addition, the Commission’s rules provide that base forfeitures may be adjusted based upon consideration of the factors enumerated in Section 503(b)(2)(E) of the Act⁵⁴ and Section 1.80(a)(4) of the Commission’s rules. The factors which may be considered include “the nature, circumstances, extent, and gravity of the violation . . . and the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁵⁵ While there are two separate apparent violations here, they were related to the same sequence of events and occurred on the same day in close proximity to each other (apparently one call immediately followed the other).⁵⁶ Having considered the record in this case and the statutory factors identified above, we find that Rejoynetwork is apparently liable for a forfeiture in the amount of \$4,000 for the two apparent violations in this case.

14. Additionally, we admonish Rejoynetwork for the late filings in response to our LOI and to our Follow-up LOI. As described above, Frank Neely’s (now Rejoynetwork) response to the initial LOI was submitted several days late. Likewise, Frank Neely’s response to the Follow-up LOI was filed pursuant to an extension requested two days after the response deadline passed. Misconduct of this type

⁴⁹ *Crawford Affidavit*.

⁵⁰ *See LOI Response at Declaration of Brian L. Doyle*.

⁵¹ *See El Mundo Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 20377, 20379 (Enf. Bur. 2000) (Bureau refused to recognize an exception to Section 73.1206 notice requirements where the conversation recorded and subsequently broadcast involved a well known on-air personality and a government official).

⁵² *LOI Response at Declaration of Brian L. Doyle*.

⁵³ *See The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17115 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”); 47 C.F.R. § 1.80.

⁵⁴ *See* 47 U.S.C. § 503(b)(2)(E).

⁵⁵ 47 C.F.R. § 1.80(a)(4).

⁵⁶ *See Nassau Broadcasting Partners, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 1367, 1369 (Enf. Bur. 1999) (proposing \$4,000 base forfeiture for two 73.1206 violations that were related to the same sequence of events and occurred on the same day within a two hour period) (paid).

exhibits a disregard for the Commission's authority and hinders our investigative processes. We warn the Licensee that similar conduct in the future may result in sanctions.⁵⁷

IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁵⁸ and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's rules,⁵⁹ that Rejoynetwork, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$4,000 for violating Section 73.1206 of the Commission's rules.⁶⁰

16. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules, that within thirty (30) days of the release date of this NAL, Rejoynetwork, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Rejoynetwork, LLC will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov and Ben.Bartolome@fcc.gov.

18. The response, if any, shall be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington D.C. 20554, and **MUST INCLUDE** the NAL/Account Number referenced above. If any response is filed, Rejoynetwork, LLC shall also, to the extent practicable, transmit a copy of the response via email to Hillary.DeNigro@fcc.gov and Ben.Bartolome@fcc.gov.

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the

⁵⁷ See *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898 n. 36 (2003) (noting delayed response to an LOI is considered dilatory behavior which may result in future sanctions) (subsequent history omitted). See also *BigZoo.Com Corporation*, Notice of Apparent Liability for Forfeiture and Order, 19 FCC Rcd 24437 (Enf. Bur. 2004), *forfeiture ordered*, 20 FCC Rcd 3954 (Enf. Bur. 2005) (ordering \$20,000 forfeiture for failure to respond to an LOI).

⁵⁸ See 47 U.S.C. § 503(b).

⁵⁹ See 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1206.

⁶⁰ See 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1206.

respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. **IT IS FURTHER ORDERED** that the Complaints filed **ARE GRANTED** to the extent indicated herein, and the complaint proceeding to the extent indicated herein **IS HEREBY TERMINATED**.⁶¹

21. **IT IS FURTHER ORDERED** that a copy of this NAL shall be sent, by Certified Mail/Return Receipt Requested, to Rejoynetwork, LLC at its address of record and to its counsel, David Tillotson, Esquire, Law Office of David Tillotson, 4606 Charleston Terrace, N.W., Washington, D.C. 20007-1911.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro
Chief, Investigations and Hearings Division
Enforcement Bureau

⁶¹ Consistent with Section 503(b) of the Act and with Commission practice, for the purposes of the forfeiture proceeding initiated by this *NAL*, Rejoynetwork, LLC shall be the only party to this proceeding.